II. REMARKS

Claims 1, 2, 51-53, 62 and 76 are presently under examination in this application and stand rejected under (1) 35 U.S.C. §101 based on double patenting (claims 1, 2, 51-53, 62 and 76); (2) the judicially created doctrine of obviousness-type double patenting (claims 1, 51 and 52); (3) 35 U.S.C. §112, first paragraph (claims 51, 52 and 62); (4) 35 U.S.C. §112, second paragraph (claims 1, 2, 51-53, 62 and 76); and (5) 35 U.S.C. §102(b) (claims 1, 51, 52, 62 and 76). These rejections are traversed for reasons discussed below.

Overview of the Above Amendments

Claims 1, 3-50, 52-61, 67-72, 74 and 75 have been cancelled and elected claims 2, 51 and 76 have been amended to recite the subject invention with greater particularity. Specifically, claim 2 has been rewritten in independent format and minor wording changes have been made to clarify the boundaries of the recited sequence, as requested by the Office. Claims 51 and 76 have been amended to depend from claim 2.

Additionally, pursuant to MPEP 821.04, applicants are requesting rejoinder of withdrawn method claims 63-66 and 73. Claims 63 and 73 have been amended herein to depend from claim 2, which claim is believed to be allowable. Claims 65 and 66 both ultimately depend from claim 2. As explained in MPEP 821.04, if applicant elects claims directed to a product, and the product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined. Thus, rejoinder is believed to be appropriate and is respectfully requested.

Cancellation of claims 1, 3-50, 52-61, 67-72, 74 and 75 and amendment of claims 2, 51, 63, 73 and 76 is made without prejudice, without intent to abandon any originally claimed subject matter, and without intent to acquiesce in any rejection of record. Applicants expressly reserve the right to file one or more continuing applications containing the unamended claims.

The Double Patenting Rejections

Claims 1, 2, 51-53, 62 and 76 were rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1, 2, 31, 32, 42 and 56 of copending, related application no. 10/134,297. Applicants note this rejection is provisional as none of the allegedly conflicting claims have in fact been patented. Accordingly, applicants request this rejection be held in abeyance until allowable subject matter is indicated. Applicants will then consider the propriety of canceling the conflicting claims in this or the '297 application.

Claims 1, 51, 52 and 76 were rejected under the judicially created doctrine of obviousness-type double patenting over U.S. Patent No. 6,660,270. Applicants note that claim 2 was not subject to this rejection. As all claims either directly or ultimately depend from claim 2, this rejection is now moot. Withdrawal thereof is respectfully requested.

Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 51, 52 and 62 were rejected under 35 U.S.C. § 112, first paragraph as not complying with the written description requirement. As explained above, all claims now directly or ultimately depend from claim 2 which was not subject to this rejection. Hence, the rejection under 35 U.S.C. §112, first paragraph has been overcome and withdrawal thereof is requested.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1, 2, 51-53, 62 and 76 were rejected under 35 U.S.C §112, second paragraph as indefinite. In particular, the Examiner asserts the sequence boundaries in claims 1, 2 and 51-53 are unclear and requests applicants amend the claims to recite the sequence identifier only. Applicants have so done. Thus, this basis for rejection has been overcome.

Claims 1 and 51 were rejected as including non-elected subject matter. The non-elected subject matter is no longer present in the claims. Hence, this basis for rejection has also been overcome.

Claim 76 was rejected based on the recitation GapC protein. Claim 76 now depends from claim 2 which defines the GapC protein as comprising the sequence of amino acids of SEQ ID NO:4. Accordingly, this basis for rejection has also been overcome.

Withdrawal of the rejections under 35 U.S.C. §112, second paragraph is respectfully requested.

Rejections Under 35 U.S.C. § 102(b)

Claims 1, 51, 52 and 62 were rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,328,996 to Boyle et al. Additionally, claims 1, 51, 52, 62 and 76 were rejected under 35 U.S.C. §102(b) over International Publication No. WO 98/18930 to Choi et al. Without conceding the correctness of this rejection, applicants have amended the claims to either directly or ultimately depend from claim 2. Claim 2 was not subject to any art rejections. Accordingly, all claims are believed to be allowable over the art.

III. CONCLUSION

Applicants respectfully submit that the present claims are patentable. Accordingly, allowance is believed to be in order and an early notification to that effect would be appreciated. If the Examiner notes any further matters which she believes may be expedited by a telephone interview, she is requested to contact the undersigned attorney at (650) 493-3400.

Respectfully submitted,

Date: 2/23/04

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